85-1489

Supreme Court, U.S.
FILED
JAN 27 1986
JOSEPH F. SPANIOL, JR.
CLERK

CASE NO. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1985

ARNOLD W. AND MARTHA A. HILGEFORD

Petitioners

v.

THE PEOPLES BANK, PORTLAND, INDIANA

Respondent

On Writ of Certiori to the United States Court of Appeals for the 7th Circuit

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PETITION FOR WRIT OF CERTIORARI

ARNOLD W. HILGEFORD

Appearing Pro-Se

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QUESTION PRESENTED

Does the law approved by the Sixteenth Congress, Session I. Ch. 51., April 24, 1820, a measure supporting the land patent issued by The Bureau of Land Management, which is a section of the Department of the Interior of the United States Government; does this document establish an allodial freehold?

If so, does this document also confer on the heirs and assigns the same allodial freehold?

PARTIES

The caption of the case in this court contains the names of all the parties.

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The decision of the United States Court of Appeals for the Seventh Circuit is reported as Hilgeford v. Peoples Bank of Portland, IN. No. 85-1744. It is reprinted in the appendix at A-1 thru A-7.

Basis for Invoking Jurisdiction

The United States Court of Appeals for the Seventh Circuit Rendered its opinion and entered it of record on October 31, 1985.

This court has jurisdiction to review the opinion rendered by the Seventh Circuit Court of Appeals by reason of the statutes cited on page iv. and the provisions of amendment 5 to the United States Constitution.

This case involves an attempt by the respondent Bank, Peoples Bank of Portland, IN. to foreclose on a mortgage. The Act of Congress and subsequent Statutes involved here are cited on page iv. of this book.

STATEMENT OF THE CASE

1. Basis for Federal Jurisdiction.

This is an action brought by Arnold and Martha Hilgeford to have the courts decide the validity of the ''land patent'' as an allodial freehold to the heirs and assigns just as it is to the original grantee.

2. Facts and Procedural History.

Petitioner is a farmer in Jay County, Indiana, who took out a mortgage with the Peoples Bank of Portland, IN. Sometime after taking out this mortgage, Plaintiff discovered that he did not have the absolute title to his farm. Accordingly, plaintiff filed an application with The Bureau of Land Management of the Department

of the Interior of the United States Plaintiff received the ''patent'' in May of 1984. Plaintiff filed the patent on August 29, 1984. Respondent Peoples Bank foreclosed on the 2nd day of November of 1984. They were notified by the plaintiff that plaintiff held and had duly recorded the ''land patent'' with the Jay County, Indiana Recorder on August 29, 1984.

Respondent sought and received a Writ of Assistance and Plaintiff was ejected by the Jay County, Indiana Sheriff on or about the 10th of April, 1985.

Plaintiff filed an action to quiet title with the U.S. District Court in

Fort Wayne, Indiana which the court dismissed sua-sponte. Plaintiff then appealed to the U.S. Court of Appeals for the Seventh Circuit and the ruling of the U.S. District Court was upheld in a decision handed down on 31 October 1985.

Both the District Court and the Appeals Court have termed this litigation frivolous, and vexatious. I submit that all litigation is vexatious to one of the parties to an action at the bar. I would like to be informed by this honorable court how an action to retain property that is being removed from my custody and control can be libeled frivolous. Plaintiff is well aware of the various court's use of

this dodge to evade responsibility for deciding an issue at law fairly or equitably. As for the fines and sanctions imposed, plaintiff feels that this is nothing more than intimidation on the part of these courts. Under our republican form of government, the courts are supposed to be open and free of access to the public.

Regarding the court's assertion that we drew up and filed the land patent ourselves, the patent is a document issued by the United States Government and signed by the then sitting president. The reason for the document known as the Declaration of Patent is that the original land patent was issued for more acreage than we now

possess so we had to outline our claim, otherwise we would have been infringing on someone else's property covered by the same patent. In other words the original grant has been broken up through the years into smaller tracts of land.

No attempt has been made on our part to escape our responsibilities to the respondent, Peoples Bank. We have tried to renegotiate this loan with them and they have refused to discuss it. The court should note the following errors in the ruling handed down by the 7th Circuit Court in this case. 1. The land patent is the absolute title to land as defined by this court in Summa v. California, US-80 L Ed 2d

237, 104 S. Ct. (No. 82-708), decided April 17, 1984. Decision was patented lands are not liable to eminent domain or public trust easement. This decision would seem at odds with appellant court's statement that the patent is a self-serving document.

2. Congress passed on September 28, 1984, an Act known as The Shoalwater Bay Indian Tribe-Dexter-By-The-Sea Claim Settlement Act. This act was in direct response to a suit filed by the indian tribe claiming land encroachment. Congress settled the suit out of court by paying the indians via the above cited act not to press their claim. The patent holder in this case is a present day assign of the original

patent holder.

3. A law approved by Congress, April 24, 1820, is the linchpin measure supporting the land patent. (SIX-TEENTH CONGRESS, Sess. I. Ch. 51. 1820). This Act slammed shut the door on the "merciless speculators" and created a mechanism by which the appropriate agencies of government conveyed absolute title by law as well as by deed to citizens. Then as now, "absolute title" means a title subservient to none-not creditors, not even the powers of eminent domain. Court decisions recited earlier in this book make the case for these patented lands. In the case of this statute, the business of government and legal practices

when invoked-have extended the law to its logical conclusion.

The United States Constitution states in Art. 1, Sec. 10: "No State shall.... impair the obligations of Contracts". The Patent of the government was issued. As the assignee, whether he be the first, second or third party to whom title is conveyed shall lose none of the original rights, privileges or immunities of the original grantee of Land Patent.

The rights of the assignee are further protected in the transfer by patentee ..."Titles and rights of bona fide purchaser from patentee... will be protected. The patent to the assignee

was protected in all of the following cases. U.S. v. Debell (1915, CA8 SD) 227 F 760; U.S. v. Beaman (1917, CA8 Colo) 242 F 876; State v. Hewitt Land Co. (1913) 74 Wash 573 and in 134 P 474 from 43 USS 15, n44 which says; Title and rights of bona fide purchaser from patentee, who relied on patent which was valid on its face, will be protected.

For these reasons petitioner feels he is justified in asking the court to act with favor on this petition for certiorari.

ARGUMENT

1. Introduction.

The United States Court of Appeals held that this appeal to that court was a "frivolous and vexatious" action. The court also granted the respondent bank $500.00 in the form of a fine against the plaintiff and assessed legal fees against the plaintiff.

2. Reasons for Granting Certiorari.

The issue involved in this action is of the most basic constitutional right to own and hold property in freehold. As such this case has implications for the whole of the United States.

Summa v. California, -US-80L Ed 2d 237, 104 S. Ct. -(No. 82-708)

Argued February 29, 1984.

Decided: April 17, 1984

Decision: Lagoon whose title was confirmed by the federal patent to original Mexican grantees held not subject to public trust easement.

Bagnell v. Broderick, 13 Peter (U.S.) 436 Congress has the sole power to declare the dignity and effect of titles emanating from the United States and the whole legislation of the Government in reference to the public lands declare the patent to be superior and conclusive evidence of the legal title. Until it issues, the fee is in the

Government, which by the patent passes to the grantee, and he is entitled to enforce the possession in ejectment. Hogan v. Page, 69 U.S. 605, 17 L. Ed. 854 (Dec. 1864). A patent certificate, or patent issued, or confirmation made to an original grantee or his legal representatives embraces representatives of the grantee or assigns by contract as well as by law. Fenn v. Holme, 21 Howard 481 (Dec. 1858). The plaintiff in ejectment must in all cases prove the legal title to the premises in himself, at the time of the demise laid in the declaration, and evidence of an equitable title will not be sufficient for recovery. The practice of allowing ejectments to be

maintained in state courts on equitable titles cannot effect the jurisdiction of the courts of the United States. Sandford v. Sandford, 139 U.S. 642, 35 L. Ed. 290 (1891).

In cases of ejectment, where the question is who has the legal title, the patent of the government is unassailable.

3. The parties' agreement specifically addresses the issue posed by the instant case.

The opinion of the Seventh Circuit (A-1 through A-10) completely ignores previous cases stated earlier as the authorities. Not only did they ignore the authorities but have misapprehended the Act of Congress cited. There inter-

est seem to sway from the issue to one of assault of a common man. It is true that I am a man farmer, whom now is forced to expound and protect that which I love the most. That I must now apologize to the court for having failed in affording the cost of recognized council before this court. I must admit, that I am uncomfortable having to address issues of law when I am a farmer not a priveleged learned experienced lawyer; to which this highest court is accustomed. It is in this air and handicap that I am presenting the issue by this instant case.

The opinion of the Seventh Circuit completely ignores the fact that the petitioners have presented cases as the

authorities. The authorities in each case were the assigns (page 13 and 14). The authorities established by these cases set the current assigns as the at law owners. Finally, in one case the matter of the assign of a patent became of such major importance that the government would not and did not press the issue. Afraid, of drawing court attention the issue resulted in an Act of Congress, known as The Shoalwater Bay Indian Tribe-Dexter-By-The-Sea Claim Settlement Act.

The opinion completely ignores the rights of the "patent holder". The rights and obligations cited and made law by the Sixteenth Congress. (See page 9 (3)). It is my purpose to discuss,

at large, the merits of the forced fee patent policy and to address the intent of the Act of 1820. The Act of 1820 and its subsequent authorities; which have come from it were then and now to serve as a shield to the land owners. A shield to the land owners now and a shield to the settlers then. The land owner farmers to be shielded from the "merciless speculators", which have been are now known as the foreclosing banking institutions. Whose cupidity and avarice is unquestionably tempted by the improvements which the farmers have made over the countless years, with sweat of their brows, and to which they have been encouraged by the conduct of the government itself; for, though they might be

considered as embraced by the letter of the law which provides against intrusions. Yet, that the instant case has not been considered by the government as within the mischiefs intended to be prevented is manifest, not only from the forebearance to enforce the law, but from the positive regards which others, in their situations have received, by several laws which have heretofore granted to me the same right of pre-emption which are extended to the present farmer assigns in-fact.

The opinion states nothing as I am now stating, " the foreclosing bank is acting under color of law, when in-fact they have not been within the law." They have provided and delivered a

mortgage but would not and could not deliver to petitioner/borrower the highest title to the property, at-law.

It is clear that the parties have, in the instant case, entered into a mortgage agreement. The petitioner solicited the aid and obtained a mortgage from the respondent, The Peoples Bank of Portland, Indiana. The agreement that the parties' entered into was to provide the borrower; with the agreements successful completion and satisfaction a clear and superior title. The petitioner/borrower continued to satisfy the obligation required by the schedule of the mortgage agreement within its terms. Quite some time later the petitioner discovered that an equit-

able title was to be delivered to the petitioner and not a clear and superior title at-law. The petitioner submits that the lender knew in advance or should have known, as it is their business to know, that a mortgage was being offered to petitioner; in which he would be denied absolute title to the property.

During the course of the agreement petitioner took the necessary steps to protect the parties'. The petitioner sought out through and with their cooperation of the Department of the Interior and the Bureau of Land Management to obtain the assignment of the at-law, Original Deed of Entry. Upon further discovery through the govern-

ment. Petitioner followed the directives and procedures in bringing the patent up and into our names. This was accomplished in that the Congress made provision of subsequent owners in the catagory of "HEIRS AND ASSIGNS, FOREVER". See Page 9. (3). PROVISION FOR THE SALE OF THE PUBLIC LANDS AND ABRIDGEMENT OF THE DEBATES OF CONGRESS, Monday, March 6, 1820 and Thursday, March 9, 1820.

Petitioner made public his superior title and interest to the property. This was accomplished by recording of the Patent with Affidavit, upon which it had been properly executed, signed and notarized. The Department of the Interior through the Bureau of Land

Management were subsequently notified as to whom now held and did hold that Current Deed of Entry (Land Patent). Petitioner then discovered that title insurance for the property was no longer in force and further was not renewable or even obtainable. The title insurance company determined that since the title to the property had now been perfected title insurance was not needed or necessary. The same held true to renewing the policy or for future transfer of the patent to future heirs or assigns.

The chain and time of events in which petitioner found himself were and are purely coincidential.

Still the process of farming and the events surrounding the crop planting and harvesting continued. Our relationship with the respondent continued. Our agreement under the provisions of the mortgage were in force. Petitioner was to make payments under the terms of the mortgage. Following this the state of affairs changed in the United States. The Administration of President Carter enacted the grain embargo, which set the chain of events regarding farming that cannot be understated. This court as well as the whole country knows well what happened to farm grain commodity prices and farming as a whole across America.

During this time but at some time

later respondent/Bank obtained illegal removal and ejectment of petitioner from the property without due process of law. It has already been determined through this very court. The practice of allowing ejectments to be maintained in state courts on equitable titles cannot effect the jurisdiction of the courts of the United States. See Sandford v. Sandford, 139 U.S. 642, 35 L Ed. 290 (1891). Petitioner pointed out to the Bank, the error, in the title and that the question of who has the legal title, the patent of the government is unassailable.

The petitioner, again pointed out to the Bank the terms of the mortgage. The agreement of the mortgage

has to be commenced and brought to its logical conclusion and satisfaction. The matter of the mortgage is not at issue with the petitioner. The petitioner in this action denies any wrongdoing. We were acted on by the Bank without regard to our intentions concerning the mortgage agreement and of the existance of the patent. We state that adverce economic conditions did alter the schedules for the mortgage agreement. Petitioner states, "we never did or would we wrongfully escape our obligation under the terms of the agreement". However, we were denied access to resuming the schedule. The schedule of the agreement. This was done by wrongfully and illegally being removed

and ejected from our property. Evidence of this has further aggravated the situation by removal of the Bank from the only possible satisfaction of the agreement they could of realized. The petitioner being removed and ejected from the only possible source of reward to satisfy the mortgage agreement. The respondent has denied themselves resumption and satisfaction of the mortgage. Petitioner further stated that first under GOD and second because of my promise to satisfy and complete my obligation. The petitioner would not abandon nor escape my obligations. We further state that upon legal resolve of this matter and restoration of me and my persons to the property. We will

resume the schedules under the terms and conditions of that agreement and under the laws of the United States of America.

The action required of the petitioner in obtaining superior and absolute title was actually to protect the parties'. First, by providing and protecting the Bank in insuring absolute control and ownership of the property to the borrower. Thereby providing the borrower uninterrupted control and custody of the property from other unforseen concerns. The second consideration was to protect the borrower in this instant the petitioner in this case. In order for him to be assured a superior title upon satisfaction

and completion of the mortgage agreement. Otherwise, it is forseeable that upon its conclusion of the schedule for the mortgage. It was possible that the borrower could be robbed and cheated after a life time of payment on the land, in which he deem and was rightfully his to own. In addition, without the superior title and absolute control it was further possible that the payment schedule to the Bank could be interrupted by a third or suing concern against borrower. The patent removed and made the property immune from all collateral attack. Thereby, further protecting the parties' from interruption in the schedule on the mortgage agreement. Further it was the intent and

which has been argued at some length here, that it was carefully calculated by Congress to plant and to hold in the country a population of independent, unembarrassed freeholders, that by offer the land initially and now, as the assigns, it would place it in the power of almost every man to hold a freehold; that it would cut up speculation, monopoly, and remove and stop those that would take advantage of the holder of the land. Further that it would prevent the accumulation of alarming debt, which experience proved never would and never could be paid. This now for many appears to be the situation.

In effect, the parties have been protected by the patent of the government. It is difficult for the petitioner to understand the Banks fear of the patent. Particularly, when petitioner has never shown a history of delinquency. Nor has the quality or state of being delinquent a factor with the petitioner.

We have all read and made an offer with a reasonable agreement and explanation. We see now how this matter got to the highest court in the land. It makes little sense to rule, as the Seventh Circuit did, that "just cause" would be the standard, when the matter in this instant case has nothing to do with the agreement; in which the Bank

is acting. We are not dealing with a matter of Breach of Contract between the Bank and its borrower. We are arguing with a matter of Breach of Contract set into place by the execution and force of our own Constitution upon its ratification. The fact that a person can be removed from patented land by the State does not have defense.

The agreement of the parties' should be in the instant case honored. The discipline imposed by the State, as there can be no "just cause", should be terminated and reversed. The removal of the petitioner from his farm was a contemptable act. The difficulties now faced by the petitioner are not

necessarily of his own doing. The Seventh Circuit erred in not holding the patent of the government the highest and best title at law. The Seventh Circuit erred in not restoring the petitioner/patentee to the farm property.

CONCLUSION

This court should issue a Writ of Certiorari and reverse the decision of the 7th United States Court of Appeals.

Respectfully Submitted,

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IN THE UNITED STATES COURT OF

APPEALS FOR THE SEVENTH CIRCUIT

Arnold W. and Martha A. Hilgeford
No. 85-1744
Plaintiff-appellants

v.

Peoples Bank of Portland, Indiana

Respondent-Appellee

Appeal from the United States District Court for the Northern District of Indiana, Ft. Wayne Division. No. 85 C 154- William C. Lee, Judge Submitted August 22, 1985-Decided October 31, 1985.

Before Wood, Cudahy, and Easterbrook, Circuit Judges.

Per Curiam. Pro-Se appellants Arnold and Martha Hilgeford (The Hilgefords) commenced a quiet title

action against their mortgagee, the Peoples Bank (The Bank), claiming that their "federal land patent") gave them superior title to certain real estate over the Bank's interest. The Bank had apparently made a loan to the Hilgefords, secured by a mortgage on the Hilgeford's property. This mortgage was subsequently foreclosed and the property sold to satisfy the debt when the Hilgefords defaulted on the loan. The land patent upon which the Hilgefords assert a superior title was drafted and signed by them, and recorded after the Hilgefords mortgaged their property in favor of the Bank, but apparently before the state foreclosure proceedings commenced. The Hilgefords seek title

to the property and the interests of the parties determined by the court, and the Bank enjoined them from asserting any rights to the land. No diversity of citizenship was alleged, rather jurisdiction in the district couty was predicated on the existence of a federal question, 28 USC 1331. The district court **sua-sponte** dismissed the suit for lack of jurisdiction and imposed a fine of $250.00 as a sanction pursuant to Federal Rule of Civil Procedure 11. Hilgeford v. Peoples Bank, 607 F. Supp. 586, 539 (N.D. Ind. 1985). The Hilgefords appealed.

On appeal, the Hilgefords have submitted a two page brief containing a jurisdictional summary along with

their argument that a land patent from the United States Government is absolute and immune from collateral attack. While this court may hold a pro-se litigants briefs to a lower standard than those prepared by counsel, McCottrell v. E.E.O.C., 726 F 2nd 350, 351 (7th Circuit 1984), the Hilgeford's brief is woefully inadequate. However it is sufficient, along with the record, for us to determine the jurisdictional question, the only issue on appeal.

The Hilgefords premise jurisdiction on the existence of a federal question by reason of their land patent, 28 USC 1331, specifically asserting that the action arises under Article IV, Sec. 3, Clause 2 of the United

States Constitution and an 1820 Act of Congress, 3 Stat. 540. It is well settled however, that controversy involving land has never been regarded as presenting a federal question simply because one of the parties to it has derived his title from a patent or under an Act of Congress. See e.g. Onieda Indian Nation v. County of Onieda, 414 U.S. 661, 676 (1974), Shulthis v. McDougal, 225 U.S. 561, 570 (1912), Joy v. City of St. Louis, 201 U.S. 332, 342-43 (1906); State of Wisconsin v. Baker, 698 F 2d 1323, 1327 (7th Cir.), cert. denied, 463 U.S. 1207 (1983), Standage Ventures Inc. v. State of Arizona, 499 F 2d 248, 249 (9th Cir. 1974), Heirs of Burat v. Board of Levee

Comm'rs, 496 F 2d 1336, 1339 (5th Cir.), cert. denied, 419 U.S. 1049 (1974) Kirlin v. Ellerbe, 278 F. 168 (5th Cir. 1922).

> Only if the federal law continues to govern the right, or if the suit is to decide whether the United States did, in fact, originally convey it, does an action to enforce that right "arise under" federal law. "The federal nature of the right to be established is decisive-not the source of the authority to establish it."

State of Wisconsin v. Baker, 698 F 2d at 1327

(cities omitted)

Neither the federal constitution and statutory provisions cited, nor the existence of title derived from a land patent arises a sufficient federal claim or issue upon which to base the jurisdiction of the District Court. The instant case does not require the interpertation or construction of these alleged bases of jurisdiction. Rather the action involves only mortgage foreclosure, proper for state court determination, not federal court. Land title and possessery actions are generally not the business of the federal courts, e.g. White v. Burnley, 61 U.S. (30 How.) 235 (1857), Beaurgard v. New Orleans, 59 U.S. (18 How.) 497 (1856), and this case is no exception.

BEST AVA

Finally the District Court's imposition of sanctions under Rule 11 will be upheld absent an abuse of discretion. Frazer v. Cast No. 84-2330, slip op. at 6 (7th Cir. Aug. 20, 1985). The Hilgefords failed to enumerate how the District Court abused its discretion or even to argue the issue in their appellant brief.

Under Federal Rule of Appellant Precedure 38, we may award damages, including attorney fees, and costs if an appeal is both frivolous and an appropriate case for the imposition of sanctions. See Trecker v. Scag, 747 F 2d 1176, 1179 (7th Cir. 1984), cert. denied, 105 S. Ct. 2140 (1985); Ried v. United States 715 F 2d 1148, 1154-

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55 (7th Cir. 1983). The conclusion that this appeal frivolous seems inescapable. The drafting and recording of the Declaration of Land Patent was blatant attempt by the Hilgefords to circumvent the Bank's mortgage and improve their title.

The District Court informed them twice within a month's time that this device did not improve their title or form the basis for federal jurisdiction by citing relevant authority or by refuting the District Court's analysis. Our review of the briefs and record persuades us that this is vexatious litigation; an appropriate case for the imposition of sanctions. The Hilgefords have no support for their

claim of superior title or of federal jurisdiction. Their brief was also woefully inadequate. We can think of no other reason for this appeal other than delay, harrassment, or sheer obstinancy. Reid, F 2d at 1156. Accordingly, we award the Bank $500.00 in damages for this frivolous appeal in addition to the costs allowed by Federal Ruie of Appellant Procedure 39.

The judgement of the district court is affirmed.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF INDIANA

FORT WAYNE DIVISION

Arnold W. and Martha Hilgeford,

Plaintiffs, No. F 85-154

v.

The Peoples Bank, Portland,

Defendant

ORDER

This matter is before the court on its sua sponte analysis of the complaint filed in this cause. For the following reasons, this cause will be dismissed on the court's own motion.

Plaintiffs are proceeding pro se. Pro se pleadings are to be liberally construed. Haines v. Kerner, 404 U.S.

519, 92 S. Ct. 594 (1972). The district court's role is to ensure that the claims of pro se litigants are given "fair and meaningful consideration." Matzker v. Herr, 748 F. 2d 1142, 1146 (7th Cir.1984); Caruth v. Pinkney, 683 F.2d 1044, 1050 (7th Cir. 1982).

This court also recognizes that federal courts have historically exercised great tolerance to ensure that an impartial forum remains available to plaintiffs invoking the jurisdiction of the court without the guidance of trained counsel. Pro se motions are complaints such as the plaintiff's are held to less stringent pleading requirements; rigor

in the examination of such motions, complaints and pleadings is inappropriate.

This is the second action filed by plaintiffs against this defendant within the last two weeks. The first action, Hilgeford v. The Peoples Bank, No. F 85-142, was dismissed by this court for lack of jurisdiction in an order dated April 11, 1985. This court ruled in that order that the basis of jurisdiction proferred in the complaint failed to allege any federal question, and that diversity jurisdiction failed because both the plaintiffs and the defendant are citizens of Indiana. With knowledge of the court's

April 11, 1985 ruling, plaintiffs filed this cause, which is nearly identical to the first cause, except that the plaintiffs have made reference to federal constitutional and statutory provisions in an apparent attempt to bolster jurisdiction.

The essence of both No. F. 85-142 and this cause is that plaintiffs seek to quiet title to certain real property located in Portland, Indiana. The plaintiffs claim superior title to the property by virtue of a "Land Patent" which they drafted and signed themselves and recorded with the Recorder of Deeds in Jay County, Indiana. The defendant bank

had apparently made loan to the plaintiffs, and secured the loan via a mortgage on the property. The bank filed a foreclosure action, and on April 10, 1985, had the plaintiffs evicted from the property. Plaintiffs seek to have the title to the property and the interests of the parties determined in this court, and the defendant bank enjoined from asserting any rights in the land.

The alleged basis for jurisdiction are Art. IV, Sect. 3, Clause 2 of the United States Constitution, and an Act of Congress of April 24, 1820, 3 Stat. 566. Article IV, S 3, cl. 2 gives Con-

gress the power to "dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States . . .," and the Act of Congress of April 24, 1820 was the statute enacted by which the government apparatus for disposing of public lands via issuance of land patents was created. However, neither of these provisions are implicated here. These provisions, and the current statutory machinery for land patents set out at 43 U.S.C. S 1, et seq., are for land patents to public lands of the United States. These provisions allow the United States to grant title to public

land to private individuals, thereby creating private title in the patent holder, and extinguishing title in the United States. The "patent" involved here is not a grant by the United States; it is a grant by the plaintiffs. The "patent" here is not a grant to some other holder so as to pass title on to another party; it is a self-serving document whereby the plaintiffs grant the patent to themselves. This "patent" does not involve or concern "public land"; it relates to plaintiffs' private property. The court cannot conceive how these federal provisions are implicated here, and thus federal question juris-

diction is absent.

Of course, the purported "land patent" in this case fails for reasons independent of jurisdiction. As was noted before, the "land patent" attached to plaintiffs' various filings is a grant of a land patent from the plaintiffs to the plaintiffs. It is, quite simply, an attempt to improve title by saying it is better. The court cannot conceive of a potentially more disruptive force in the world of property law than the ability of a person to get "superior" title to land by simply filling out a document granting himself a "land patent" and then filing it with the recorder of deeds.

Such self-serving, gratuitous activity does not, cannot and will not be sufficient by itself to create good title.

The blatent insufficiency of the "patent" is evident when it is compared to the copy of a land patent attached to the plaintiffs' "Motion Barring Action of Ejectment." That copy, which is apparently of the original land patent for part of the property which is the subject matter of this cause, bears the signature of the President of the United States by his appointed Secretary of the Interior. It is clearly a grant from the United States to a private citizen (one Reuben Montgomery).

Plaintiffs' "land patent" is obviously insufficient when compared to this valid patent.

Finally, the court acknowledges the plaintiffs' fifty-one page "Memorandum of Law," which sets out a lengthy history of land ownership principles in England and the United States. This Memorandum is irrelevant to the issues raised by this suit. The plaintiffs apparently granted the defendant bank a right in the property by mortgaging the property, and gave the bank the contractual right to foreclose on the property in case of default. The filing of the purported "land patent," and

then the filing of these two lawsuits to quiet title, after the creation of the bank's mortgage interests, smacks of bad faith attempts to interfere with the defendant's contractual and property rights.

Because this cause constitutes the third quiet title suit filed in this court within the past month on the basis of almost identical self-serving land patents (two of which were filed by these same plaintiffs), the court fears that other such suits will be filed unless a signal is sent that this court will not tolerate such obviously frivolous suits based upon documents which on their

very face legal nullities.

Rule 11 of the Federal Rules of Civil Procedure governs the signing of pleadings and motions, and requires that each pleading or motion be signed by an attorney or the party (if the party is proceeding pro se). The rule then provides:

> The signature of an attorney or party constitutes a certificate by him that he had read the pleading, motion, or other paper; that to the best of his knowledge, information and belief formed after reasonable inquiry it is well grounded in fact and is warranted

by existing law or good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harrass or to cause unnecessary delay or needless increase in the cost of litigation.

If a pleading violates this rule, the court "shall impose" an "appropriate sanction," which may include the amount of reasonable expenses and attorney's fees incurred by the other party because of the filing of the pleading or motion.

The notes of the Advisory Committee on the Federal Rules make it clear that Rule 11's provisions are designed to "discourage dilatory or abusive tactics and (to) help streamline the litigation process by lessening frivolous claims or defenses." The rule applies to anyone who signs a pleading, motion, or other paper, and the same standards apply to pro se litigants, although the concerns of Haines v. Kerner can be taken into account.

The core of Rule 11 is that the signature on the pleading certifies that "to the best of his knowledge, information and belief formed after reasonable in-

quiry it (the pleading, motion, or paper) is well grounded in fact and is warranted by existing law or good faith argument for the extension, modification, or reversal of existing law . . .." (emphasis added). What is important to note is that this language requires more than just a belief that the law is or should be a certain way; as the Advisory Committee states, "what constitutes a reasonable inqyury may depend on . . . whether the pleading, motion, or other paper was based on a plausible view of the law," and is thus a "more stringent" standard than good faith.

This cause falls squarely within the parameters of the type of frivolous claims that Rule 11 allows courts to issue sanctions for. It is based upon purported land patent which indicates on its face that it is a self-serving document, drafted by the plaintiff to grant themselves title to land, and

which does not invoke any federal law or constitutional provision precisely because it is a blatent attempt by private landowners to improve title by personal fiat. Such lawsuits constitute a gross waste of precious judicial resources, for this court is forced to deal with patently frivolous lawsuits

instead of addressing those suits on its docket which have merit and deserve close judicial scrutiny.

Rule 11 gives this court power to issue fines as sanctions for filing frivolous lawsuits, and this court has used that power before without hesitation. See Snyder v. IRS, 596 F. Supp. 240 (N.D. Ind. 1984); Young v. IRS, 596 F. Supp. 141 (N.D. Ind. 1984). This case's frivolity demands the imposition of a fine as a Rule 11 sanction. The court finds that a $250.00 fine is an appropriate sanction here. Further this order stands as public notice to all future litigants who may seek to

file lawsuits based on the same type of self-serving, invalid "land patent"; this court will issue Rule 11 sanctions for such lawsuits. This court stands ready to adjudicate any federal question arising out of a valid federal land patent which has been signed by the Secretary of the Interior (43 U.S.C. S 15) and involves a grant of title to public lands. However, this court will not countenance suits based upon self-serving documents and pet theories about land ownership such as this one.

For the reasons stated above, this action hereby DISMISSED for lack of jurisdiction pursuant to Federal Rules

Civil Procedure 12(h) (3). Plaintiffs are hereby ORDERED to pay $250.00 to the Clerk of the court as a sanction for filing this lawsuit.

Enter April 18, 1985

William C. Lee, Judge

United States District Court

JUDGEMENT ON DECISION BY THE COURT

FOR THE

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF INDIANA

ARNOLD W. AND MARTHA A. HILGEFORD

vs, CIVIL ACTION

THE PEOPLES BANK, PORTLAND, INDIANA DOCKET NO. F 85-154

JUDGEMENT

This action on for consideration before the court, United States District Judge William C. Lee presiding. The issues having been duly determined on a decision having been duly rendered, it is ordered and adjudged that this cause is hereby dismissed for lack of

jurisdiction pursuant to Federal Rules Civil Procedure 12(h) (3). Plaintiffs Arnold W. and Martha A. Hilgeford shall pay $250.00 to the Clerk of this court as a sanction.

Equivalent Coupon-Issue Yield 9.15%

Prepared at: Fort Wayne, Indiana

Dated: April 19, 1985

RICHARD E. TIMMONS, CLERK

MERIDITH A. POOR, DEPUTY CLERK OF THE COURT

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF INDIANA

FORT WAYNE DIVISION

ARNOLD W. AND MARTHA A. HILGEFORD,

Plaintiffs,

v. CIVIL NO. F 85-154

THE PEOPLES BANK, PORTLAND,

Defendant.

ORDER

This matter is before the court on defendant's motion for attorney fees and sanctions contained in its motion to dismiss filed April 18, 1985, and defendant's motion to require an appeal bond. For the following reasons, both motions will be denied.

On April 18, 1985, this court dismissed this cause sua sponte for lack of jurisdiction. That same dayy the defendant filed its motion to dismiss, which included a motion for attorney fees and sanctions under Rule 11 of the Federal Rules of the Federal Rules of Civil Procedure. On April 30, 1985, the plaintiffs filed a timely notice of appeal. On May 6, 1985, the defendant requested that the plaintiffs be required to post an appeal bond, citing its pending motion for fees and sanctions and the fact that it will have to bear the costs of appeal in what this court has already characterized as a frivolous case.

The motion for fees and sanctions is governed by the recent opinion of the Seventh Circuit in Patzer v. Bd. of Regents of the Univ. of Wisconsin, Nos. 84-1267, 84-1411, slip op. (7th Cir. June 4, 1985). In the case, the district court dismissed the plaintiff's Title VII case. Plaintiff then filed a motion for attorney fees for his successful prosecution of a state court claim. The district court enied the motion for fees. On appeal, the Seventh Circuit ruled that after the dismissal of the case, the filing of a timely notice of appeal divested the district court of

jurisdiction to enter an order on the motion for fees. This court reads Patzer as holding that a notice of appeal divests the court's jurisdiction to rule on a pending motion for fees, so that the motion for fees must be dismissed for lack of jurisdiction.

1. The Patzer opinion appears to be in conflict with earlier rulings of the Seventh Circuit, which appear to imply that a district court may consider a question of fees even after a notice of appeal has been filed. These cases hold that a party must file a notice of appeal after a final judgment, even though the district court has reserved the question

of fees for later decision, or else lose the right of appeal on the judgment. See Exchange National Bank of Chicago v. Daniels, Nos. 84-2037, 84-2232, 84-2737, slip op. at 8-9 (7th Cir. May 29, 1985); Parks v. Pavkovic, 753 F. 2d 1397, 1401 (7th Cir. 1985) (if determination of damages is merely ministerial, and issue defendant wants to appeal will not be altered by the determination, then immediate appeal is allowed); Hershinow v. Bonamarte, 735 F. 2d 264, 266-67 (7th Cir. 1984) (failure of district court to determine fees does not bar immediate appeal on merits because imme-

diate appeal "allows the fee appeal to be consolidated with the appeal on the merits"); Bittner v. Sadoff & Radoff & Rudoy Industries, 728 F. 2d 820, 826-27 (7th Cir. 1984).

Prthaps the reservation of the question of fees, or the later ruling on a motion for fees which was pending at the time of the issuance of the final judgment, falls under the exception for "assisting the court of Appeals in its determination" recognized by the Patzer court. Slip op. at 12; United States v. Lafko, 520 F. 2d 622, 627 (3d Cir. 1975). Yet the language of the Patzer opinion indicates that

the time element is focused on the entry of the district court's order, not the filing of the motion: "The district court entered its order denying Patzer's motion for attorneys' fees after Patzer's timely filing of the notice of appeal ... Therefore, the district court was without jurisdiction...." Slip op. at 13. Thus, the fact that the motion may have been pending, or that the court reserved the issue of fees, would not seem to matter. Hopefully, the Seventh Circuit will soon clarify its position. In the meantime, the court is required by principles of precedent to treat

Patzer as the law of the Seventh Circuit.

If, however, the court had jurisdiction over the motion, it would deny the motion anyway. The motion to dismiss was filed on the same day as the court signed the order dismissing the case sua sponte; it therefore played no role and gave no assistance to the court's ruling. Admittedly, this timing was a result of the court's ruling celerity in dismissing the case within a week of its filing; defendant was certainly prompt in filing its motion to dismiss within six days. However, the court was concerned with sending

a clear and swift message to all potential litigants who considered suing under the spurious "land patent" at issue in this case. Thus, although defendant's analysis was cogent, it played no role in the dismissal of this case, and thus the court would (if it had jurisdiction) deny the motion for fees and sanctions on its merits.

Appeal bonds are governed by Rule 7 of the Federal Rules of Appellate Procedure, which states in pertinent part:

> The district court may require an appellant to file a bond or provide

> other security in such form and amount as it finds necessary to ensure payment of costs on appeal in a civil case.

The language of the Rule itself makes it clear that the fixing of an appeal bond is entirely discretionary with the district court. See Federal Prescription Service, Inc. v. American Pharmaceutical Assn., 636 F. 2d 755, 757, n.2 (D.C. Cir. 1980); Westinghouse Credit corp. v. Bader & Duffy, 627 F. 2d 221, 224 (10th Cir. 1980).

The court concludes that an appeal bond is inappropriate in this case. The defendant's motion was based on

two premises: (1) that this court would award attorney's fees, which the plaintiff's financial affidavit indicates they cannot pay; and (2) the costs of appeal to the defendant. Both reasons appear designed to use the appeal bond to block the appeal and thus avoid the expense of defending an admittedly frivolous appeal. This court does not believe that appeal bonds are designed to be a means to prevent parties from pursuing appeals of this court's decisions. To the extent that the defendant suffers expenses on appeal, it petition the appellate court for fees. The court

therefore will not require the plaintiffs to post an appeal bond.

For the reasons stated above, the court hereby DENIES defendant's motion for fees and sanctions, and DENIES the request for an order requiring the posting of an appeal bond.

Enter: June 25, 1985.

William C. Lee, Judge

United States District Court